DOCUMENT RESUME

ED 087 049 CS 500 554

AUTHOR Kane, Peter E.
TITLE Teaching Freedom of Speech through the Case Study Method.
PUB DATE 73
NOTE 6p.; Paper presented at the 1973 meeting of the Eastern Communication Association, New York, N. Y

EDRS PRICE MF-$0.65 HC-$3.29
DESCRIPTORS *Case Studies; *Civil Rights; *Communication Skills; Court Cases; *Court Litigation; Due Process; *Freedom of Speech; Secondary Education; Speech Education; Speech Instruction

ABSTRACT

The use of case studies or case histories of Supreme Court cases concerning freedom of speech often provides the "real world" dimension that is too often lacking in the teaching of this area. The case study or case history is a coherent narrative of the historical events designed to illuminate the issues involved in a specific situation. Such studies or narratives are particularly useful when referring to the following cases: Finer v. New York, 340 U.S. 315 (1951); the "New York Times" v. Sullivan 376 U. S. 254 (1964); and Sheppard v. the Maxwell, 348 U. S. 333 (1966). (LL)

U S DEPARTMENT OF HEALTH
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

PERMISSION TO REPRODUCE THIS COPYRIGHTED MATERIAL HAS BEEN GRANTED BY
Peter E. Kane
TO ERIC AND ORGANIZATIONS OPERATING UNDER AGREEMENTS WITH THE NATIONAL INSTITUTE OF EDUCATION. FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER

ED 087049

TEACHING FREEDOM OF SPEECH THROUGH THE CASE STUDY METHOD

Peter E. Kane

At first glance learning about freedom of speech appears deceptively simple. In civics class at about the junior high school level most students learn something about the Constitution. They learn that there was a Bill of Rights and may even receive some generalized instruction about them. They are taught that the Bill of Rights is the first ten amendments to the Constitution of the United States and, perhaps, that the First Amendment deals with freedom of speech. The words of that Amendment are quite clear. "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance."

These simple words are really quite easy for anyone to comprehend. On the junior high school level students should be able to grasp the fundamental idea that the government may not pass laws that will prevent you from saying what you want to say. However, when one gets beyond junior high school age, he realizes that in fact there are lots of laws that are used to prevent people from saying what they want to say. This fact leads one to the realization that these simple words of the First Amendment are subject to interpretation and to the realization that in our system of government it is the courts, especially the Supreme Court, that does this job of interpreting. In aseries of cases involving specific statutes and offenses the court has made a series of rulings that provide interpretative meaning to the simple words of the First Amendment.

The Supreme Court cases dealing with freedom of speech offer a second way of getting to freedom of speech subject matter. The cases can be reviewed, and the decisions handed down by the courts examined in some detail. This examination leads to the conclusion that the simple words of the First Amendment are not

CS 500 554

nearly as absolute as they appear. Thus a man named Schenck went to jail for violating a World War I espionage law by urging people to resist the draft. A man named Gitlow went to jail for distributing a socialist pamphlet in violation of New York State's criminal anarchy statute. Up in Rochester, New Hampshire, a man named Chaplinsky went to jail for insulting a police officer. Later in Syracuse, New York, a man named Finer spent six months in jail for saying uncomplimentary things about the Mayor of Syracuse. And, of course, a man named Ginzburg was sent to jail for sending dirty books through the mail. By pursuing the bound volumes of court decisions or through reading any competent text in constitutional law it is possible to come to know and comprehend most of the cases in which the Supreme Court has dealt in one way or another with freedom of speech.

In a competently taught course or unit in freedom of speech students will be exposed to the cases mentionedhere and others. They will discover historically how the Supreme Court has made rulings which interpret the simple words of the First Amendment in a variety of different ways at different times. A more than just competent course in freedom of speech will take the next critical step and help the student to abstract both basic principles regarding interpretation of the First Amendment and the techniques of legal reasoning that yield these principles. This process produces an understanding of the thinking of a judicial absolutist. Comprehension of the "clear and present danger" test is achieved as well as a grasp of the principles of "the preferred position" doctrine and the "ad hoc balancing" test.

At this point students of freedom of speech have a fairly sophisticated grasp of the body of case law in the subject area. The words of the court decisions and the abstract concepts which those words represent are understood. However, one fundamental ingredient is still missing. Cases in freedom of speech

are not just concerned with issues and concepts. Each one arises because of a specific problem faced by real people. Approaching freedom of speech through a case study or case history rather than just the reading of a court decision in a specific legal case provides the "real world" dimension that is too often lacking in the teaching of this area. To define the concept briefly, a case study or case history as the term is used here is simply a coherent narrative of the historical events designed to illuminate the freedom of speech issues involved in a specific situation. An example will help make my meaning clear. In the case of Finer vs. New York, 340 U.S. 315 (1951), it is possible to read the decision of the Supreme Court and understand the reasoning used to rule against Finer. A case history would do more. It would tell you something about Finer's background and about his activities as a student at Syracuse University. It would sketch the specific circumstances leading to his comments to a group of people assembled on a street corner in downtown Syracuse. His arrest and the circumstances of that arrest, his trial, conviction and subsequent appeals would all be reviewed. From this case history students can derive an understanding of who Finer was, why he spoke, and why he was arrested as well as why the courts ruled against him. The "real world" situation is made clear.

This illustrative example was chosen quite deliberately because it is one of the few case histories that is at present available for use in teaching freedom of speech. The historical events have been dramatized in a 28 minute color film produced by Encyclopaedia Britannica.

A second example will, I believe, clearly indicate the fundamental difference between approaching a specific situation as a Supreme Court decision or as a case history. This example is the situation that resulted in The New York Times v. Sullivan 376 U.S. 254 (1964). A careful reading of the decision handed down in this case by Mr. Justice Brennen yields some understanding of legal

principles as they concern the laws of libel. The decision tells the careful reader that private libel has always been considered an exception to the "Congress shall make no law" provision of the First Amendment. On the other hand seditious libel is not an exception. Brennen's decision suggests that the laws of private libel were being used for what is fundamentally an issue of seditious libel. Furthermore the greatest possible lattitude should be granted for criticizing the activities of elected officials. The only exception to this general principle might occur in cases where the plaintiff has been able to establish the existence of actual malice in the publication of the libelous statement.

A case history dealing with this same situation would begin with an examination of the background of civil rights conflicts in the South in general and in the Birmingham, Alabama area in specifi.. The publication of an advertisement in The New York Times reuqesting legal defense funds for Martin Luther Kind Jr. and others would be placed in that context. The specific text of the advertisement would be presented. There would follow an exploration of the response by officials in Birmingham and elsewhere in Alabama and the eventual filing of a libel suit against The New York Times by Public Safety Commissioner Sullivan. The specific nature of the complaint as presented in the suit would be examined along with the other half dozen libel suits filed or threatened against The Times. An exploration of the various legal manueverings surrounding the suit, questions such as the right of an Alabama citizen to sue a New York State corporation in the state courts of Alabama, could be reviewed. This review might create some understanding about the possible prejudicial atmosphere existing at this time in those Alabama courts. The trial itself would of course be reported with the testimony of various witnesses. The rulings of the judge and the action of the jury in rendering its decision would also be presented. The size of the libel judgment, a half a million dollars, would certainly have to be contrasted with other libel judgments previously rendered in the courts of Alabama. All this

information would provide a broad base for understanding the Supreme Court's decision as that decision addressed itself to the real problems of real people in the real world.

Still another example of the way in which the case method might work can be seen in situations where conflicts arise between the interests of opposing parties. Some of the most interesting freedom of speech areas are those in which opposing parties are with some force able to assert claims to conflicting fundamental constitutional rights. This problem can most easily be illustrated in the area of free speech and fair trial. Someone accused of a crime has a right to a trial by an unbiased jury that will make judgments about the case on the basis of the evidence presented in the trial and on that evidence only. On the other hand the media have the rights to pursue a subject that might interest the public and to report that subject as fully as the media feels proper and as fully as the public wants it reported. In cases that attract a good deal of public attention these rights may collide. Take for example the Tate-LaBianca murders. Because of the aura of sex, scandal, and mystery attached, the public had a great morbid interest in these murders. The press catered to that interest by reporting everything it could find out. Newspapers, magazines, and eventually books were published and sold to make a profit. One of the co-defendants in the case provided a complete confession to a reporter in exchange for money . How, in this situation, could Charles Manson receive a trial by a jury without prejudice or outside knowledge of the case? Through a narrative of the events leading up to the Manson trial students can be lead to a real understanding of the real world conflict involved in free press and fair trial.

A secondary advantage that accrues from using the case study method is its interest value. This advantage is not inconsiderable. Those who teach using court decisions recognize that in addition to often being difficult to read they

are also often not very interesting. In my experience the two most readily understood and appreciated court cases are Chaplinsky and Sheppard v. the Maxwell 384 U.S. 333 (1966). The decisions in both these cases have that unique quality of a case history because the justice writing the decision has provided a narrative of the events surrounding the case as part of the documentation used to arrive at a decision. In fact, it was student reaction to these cases that led to this consideration of the case study method as a way to teach freedom of speech. The case study method provides a detailed and sophisticated understanding of principles in the form that is relatively easy to grasp and interesting as well. One could ask for little more.